

BEFORE THE
DEPARTMENT OF INSURANCE
STATE OF CALIFORNIA

In the Matter of the Statement of Issues
Against:

RUSSEL JOSEPH SAGE,

Respondent.

Case No. LBB 2977-AP (AR)

OAH No. N2005120826

PROPOSED DECISION

On February 2, 2006, in Sacramento, California, Ralph J. Venturino, Administrative Law Judge, Office of Administrative Hearings, State of California, heard the matter.

Darrel Secrest, Staff Counsel, represented the complainant Insurance Commissioner of the State of California.

Russel Joseph Sage, respondent, appeared on his own behalf.

Evidence was received, the record was closed, and the matter was submitted on February 2, 2006.

FACTUAL FINDINGS

Application Issues

1. On November 16, 2005, the Insurance Commissioner acted in his official capacity when he made and filed the Statement of Issues against Russel Joseph Sage (Sage).

2. On September 22, 2005, Sage electronically filed an "Individual Application for Insurance License" (License Application) with the Department of Insurance (Department) to be licensed as a Fire & Casualty Broker-Agent. The License Application was incomplete and, at the Department's request, Sage completed the License Application and paid the full filing fee on October 24, 2005. On his License Application, Sage disclosed that he had been convicted of a federal crime. As required by the License Application procedure, Sage included an original signed written statement of the circumstances of the incident and certified copies of the court documents necessary to demonstrate all the charges, convictions, and resolution of the charges.

Conviction and Arrest Circumstances

3. On April 29, 2004, in the United States District Court for the Eastern District of California, Sacramento, in the case entitled *United States of America vs. Russel Joseph Sage*, case number 2: 03CR00552-01, Sage was convicted, on his guilty plea, of a violation of 18 United States Code section 641(theft of government property), a misdemeanor. Sage was sentenced to a 12-month Limited Supervised Probation and ordered to pay a \$25.00 assessment and restitution of \$4,156.28. The restitution covered falsely obtained moving expenses from the Navy and the State of California's investigative costs.

The circumstances of Sage's crime included Sage falsifying a truck weigh certificate to secure payment from the United States Navy (Navy) for his moving expenses. Sage obtained two weigh certificates from his destination weigh station (Sacramento) and changed the weight amount on one of the certificates. He then falsely represented that the altered weigh certificate was from his originating weigh station (San Diego). By altering the weigh certificate, and falsely presenting it to the Navy, Sage obtained a total of \$1,486.02. Sage obtained this money through dishonesty and a fraudulent act.

Sage had been advanced \$1,234.00 in moving expenses upon his agreement to furnish originating and destination weigh tickets to the Navy within 45 days from the start of his move. He did not obtain an originating weigh certificate. The altered weigh certificate kept him from having to return the \$1,234.00 advance while allowing him to collect an additional \$252.02.

4. Sage accomplished termination of his 12-month Limited Supervised Probation on April 22, 2005 (a week early), upon satisfying the court's order concerning his \$4,156.28 restitution responsibility. Sage paid all of the restitution himself. He obtained a release of the judgment lien concerning his financial responsibilities in June 2005.

Mitigation, Aggravation, and Rehabilitation

5. In an attempt to mitigate his actions, Sage credibly testified that, at the time he committed the theft, he believed that he was entitled to the moving expenses as part of his agreement with the Navy. Sage also testified that he could not afford to refund the \$1,234.00 advance he received and he made numerous telephone calls to attempt to find a solution to his problem.

However, Sage's credible mitigation testimony is also evidence of Sage doing whatever is necessary to achieve a desired result, even if it involves engaging in dishonest behavior.

6. Sage admitted that his conviction was a mistake and stated that he now understands that there is no justification for his actions. Sage also stated that his actions were out of character for him and that the allegations in the Statement of Issues are “not representative of his daily behavior. Sage believed that it was important that he confessed “immediately” when confronted with his actions and paid complete restitution.

Confessing “immediately” bears little weight in assessing a person’s good character and rehabilitation since one is simply admitting to doing something wrong after getting caught. Moreover, paying restitution was what the court ordered and Sage would have been in violation of his probation if he did not pay the restitution.

7. Sage testified that the evidence of his true character can be found in his numerous and consistent commendations for good conduct and exemplary service while serving ten years (five years of active duty and five years of reserve duty) in the Navy. Sage believes that he is someone who accepts responsibility, shows initiative, and performs above standards.

Sage offered Navy documents corroborating his testimony concerning his commendations and assessments that he is someone who accepts responsibility, shows initiative, and performs above standards.

8. At the time of the administrative hearing, Sage was employed at Abram Interstate Insurance Services, Inc. (Abram) for about three months. Sage testified that Abram is aware of his conviction and License Application issues but that Abram does not believe it is a problem for the company. Sage testified that he has been honest and reliable at his job with Abram.

Sage also testified that his employment does not require a Fire & Casualty Broker-Agent license but that he desires a license to give him credibility with his clients.

9. Sage has not had his conviction expunged but he testified that he “will try soon.”

10. Sage offered two letters of reference from his current employer, Abram, to corroborate his testimony concerning his work ethic and business qualities. One letter was from the President and Chief Executive Officer who wrote, among other things, that “[Sage] has demonstrated integrity, willingness to learn, embracement of company philosophy and has conducted himself in a professional and courteous manner. He works well with his peers and supervisors, and has been honest in his dealings with our staff and our producing agents.” Sage’s direct supervisor, the underwriting manager, wrote that Sage does his job “in a professional and honest manner.” She also wrote that “[h]is position does not require him to be licensed, however he took the initiative . . . to improve his skills as an Underwriter.”

At the time of the letters, dated February 1, 2006, they both had known Sage for the three months that he had worked at Abrams and they were aware of Sage’s convictions.

LEGAL CONCLUSIONS

Burden and Standard of Proof

1. “As in ordinary civil actions, the party asserting the affirmative in an administrative hearing has the burden of proof going forward and the burden of persuasion by a preponderance of the evidence.”¹ The burden of proof is on Sage to prove by a preponderance of the evidence that his application should be granted because he is qualified for the license for which he applied and the Commissioner has no cause to deny his License Application.

Commissioner’s Allegations and Cause to Deny

2. The Statement of Issues alleges that Sage’s theft of government property misdemeanor conviction constitutes cause to deny him his pending application for a license to act as a Fire & Casualty Broker-Agent pursuant to Insurance Code section 1668, subdivisions (b), (e), (i), and (m)(3). Insurance Code section 1668, provides in pertinent parts:

The commissioner may deny an application for any license issued pursuant to this chapter if:

[¶] . . . [¶]

(b) The granting of the license will be against public interest;

[¶] . . . [¶]

(e) The applicant is lacking in integrity;

[¶] . . . [¶]

(i) The applicant has previously engaged in a fraudulent practice or act or has conducted any business in a dishonest manner;

[¶] . . . [¶]

(m) The applicant has been convicted of:

[¶] . . . [¶]

¹ *McCoy v. Board of Retirement* (1986) 183 Cal.App.3d 1044, 1051.

(3) A public offense having as one of its necessary elements a fraudulent act or an act of dishonesty in acceptance, custody or payment of money or property;

[¶] . . . [¶]

Against Public Interest

3. The purpose of professional licensing schemes is the protection of the public and the prevention of future harm to consumers.² The public interest in regulating insurance through licensing statutes is to make certain that the privileges granted under an insurance license are not exercised in derogation of the public interest and to keep the regulated activity clean and wholesome.³ “The purpose of insurance licensing is to protect the public by requiring and maintaining professional standards of conduct on the part of licensees acting as such within this state.”⁴ For the Department to maintain this action, Sage’s conviction must be substantially related to the qualifications, functions, or duties of the particular profession.⁵ In other words, there must be a “nexus” between the conduct forming the basis of an action to deny a professional license and the applicant’s fitness to engage in the licensed activities.⁶

When a broker, in an occupation which requires public trust and confidence, may act as a potential fiduciary or in a confidential capacity, honesty and truthfulness are two qualities that bear on one's fitness and qualification to be a licensee.⁷ An insurance agent has a special, fiduciary relationship with a client, and must not engage in conduct which reflects a violation of trust or other conduct reflecting bad character. If Sage's offense reflects unfavorably on his honesty, it may be said to be substantially related to his qualifications and the required nexus is shown.

As set forth in Factual Finding 3, Sage was convicted of an offense involving theft through dishonesty and a fraudulent act. Factual Finding 3 establishes cause for the denial of his license under Insurance Code section 1668, subdivision (b).

² *Bryce v. Board of Medical Quality Assurance* (1986) 184 Cal.App.3d 1471, 1476; *In re Kelly* (1990) 52 Cal.3d 487, 496.

³ *Ready v. Grady* (1966) 243 Cal.App.2d 113, 117.

⁴ *Goldburg v. Burger* (1974) 37 Cal.App. 3d 987, 996.

⁵ *Brandt v. Fox* (1979) 90 Cal.App.3d 737, 742-743.

⁶ *Clerici V. Department of Motor Vehicles (Clerici)* (1990) 224 Cal.App.3d 1016, 1029.

⁷ See *Clerici, supra*, at 1030 [relating to a real estate licensee].

Lacking in Integrity

4. The charge of “lacking in integrity” has been found when a licensee has engaged in “deceptive and misleading” conduct.⁸ As set forth in Factual Finding 3, Sage was convicted of an offense involving theft through dishonesty and a fraudulent act. Factual Finding 3 establishes cause for the denial of his license under Insurance Code section 1668, subdivision (e).

Fraudulent Act

5. Similarly, Sage’s conviction involving theft of government money through dishonesty and a fraudulent act, as set forth in Factual Finding 3, establishes a fraudulent practice or act and the dishonest acceptance of property belonging to another. As such, the Commissioner has independent cause for the denial of Sage’s License Application under Insurance Code section 1668, subdivisions (i) and (m)(3).

Mitigation, Aggravation, and Rehabilitation Issues

6. To his credit, Sage submitted evidence showing partial rehabilitation, in that he now understands the seriousness of his actions. He admits that his actions were a mistake. In addition, Sage disclosed his conviction to the Department in his License Application. There is scant rehabilitation found in Sage doing what he was court-ordered to do and his quick confession.

7. Sage also submitted evidence of his exemplary military service and good character references from his current employer.

While Sage should certainly be commended for his exemplary military service, Sage’s conviction came after his exemplary service. His military training and exemplary service did not keep him from committing his dishonest and fraudulent actions. In addition, Sage had been with his current employer only about three months when he obtained the good character references.

Sage believes his dishonest and fraudulent acts are aberrations. More time must pass before it becomes clear that Sage was out of character and that it is unlikely that Sage will offend again.

8. Cause exists to deny Sage’s application for a Fire & Casualty Broker-Agent license pursuant to Insurance Code section 1668, subdivisions (b), (e), (i), and (m)(3) by reason of the conviction set forth in Factual Finding 3 and Legal Conclusions 3 through 5.

⁸ *Erlich v. McConnell* (1963) 214 Cal.App.2d 280, 283.


9. The matters found in mitigation, aggravation, and rehabilitation, as set forth in Factual Findings 5 through 10, and in Legal Conclusions 6 and 7, have been taken into consideration in determining if Sage's rehabilitation warrants a restricted license.

Considering the dishonest nature, and the recentness, of Sage's conviction, insufficient time has passed to garner the public trust, and ensure the protection of the public, such that a restricted license is justified.

ORDER

The application of Russel Joseph Sage to act as a Fire & Casualty Broker-Agent is denied pursuant to Legal Conclusions 8 and 9.

DATED: 3-2-06



RALPH J. VENTURINO
Administrative Law Judge
Office of Administrative Hearings